IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.141 of 1996
Date of decision 27 .9 .2007

Commissioner of Income Tax, Jalandhar ..Appellant

Versus

Suresh Sehgal Prop. M/s Sehgal Gas Supply Company .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant

M.M.Kumar, J.

At the instance of the Revenue, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity 'the Tribunal') exercising power under Section 256(1) of the Income Tax Act, 1961 (for brevity 'the Act') has opined that a question of law would arise from the order dated 12.4.1994 passed in ITA No. 868(ASR)/1993 in respect of assessment year 1992-93. Accordingly, accepting the application filed by the Revenue, the Tribunal has referred the following question of law for the opinion of this Court:

> " Whether on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the Dy. CIT(A)'s order granting depreciation @ 100% on gas cylinders in view of the first proviso to section 32(1)(ii) of the I.T.Act when 4th proviso to section 32(1) (ii) specifically provides that depreciation is to be restricted to 50% in cases where the asset is acquired and put to use for the purpose of business for less than 180 days in the relevant previous year.?"

The assessee derives its income from the sale of liquor ammonia,

ammonia gas, oxygen gas etc. His status is that of 'individual' and accordingly a return of income declaring loss of Rs. 2,24,160/- was filed on 29.10.1992. The Assessing Officer completed the assessment under Section 143(1)(a) of the Act on 16.12.1992 after making adjustment of Rs.3,74,625/- on account of excess depreciation claimed on gas cylinders. The assessee- respondent filed an application under Section 154 of the Act on 5.1.1993 claiming that the afore-mentioned adjustment was wrong as he was entitled to deprecation @ 100% because the assets owned by him fell under the block of assets within the meaning of Appendix 1(III)3(v) appended to the Income Tax Rules. The claim made by the assessee-respondent was rejected by the Assessing Officer vide order dated 15.1.1993 holding that the assets in question were owned by the assessee for less than 180 days and therefore, the claim of deprecation was restricted to 50%. Deprecation to the extent of 50% at Rs. 4,99,600/- as the cost of cylinders was allowed and the taxable income was worked out at Rs.25,590/-. On appeal, the Deputy Commissioner of Income Tax (A) held that the assessee- respondent was entitled to claim 100% depreciation vide his order dated 28.6.1993 holding that depreciation on gas cylinders has to be calculated by taking the cost of each asset which was less than Rs. 5,000/-.

The Revenue challenged the order of the Dy. CIT(A) before the Tribunal which was upheld vide order dated 12.4.1994 in ITA No. 868/ASR/1993. The Tribunal held that the case of the assessee respondent is governed by the Ist proviso to Section 32(1)(ii) of the Act.

After hearing learned counsel for the parties we are of the considered view that the view taken by the Tribunal and the CIT(A) is

unassailable. Section 32(1)(ii) of the Act reads as under:

> " 32(1)(ii)- in the case of any block of assets, such percentage on the written down value thereof as may be prescribed"
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> There is also a proviso to Section 32(1)(ii) which reads as under:
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> " Provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession."

A perusal of the afore-mentioned provision makes it evident that in cases where the actual cost of the machinery or plant do not exceed Rs.5,000/- then the actual cost shall be allowed as deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession. In the present case, the cost of each gas cylinder was found to be Rs. 1,500/- which was less than Rs.5,000/- and accordingly the assessee respondent was held entitled to claim 100% amount incurred on gas cylinder which is consistent with the proviso to Section 32(1)(ii) of the Act. By no stretch of imagination the assessee- appellant could be held entitled to depreciation @ 50 percent by treating the same to be forming part of block of assets. For the afore-mentioned view we place reliance on a Division Bench judgement of Delhi High Court in the case of CIT v. National Air Products Ltd. (1980) 126 ITR 196 wherein it has been held that gas cylinders clearly fell within the scope of definition of 'plant' as defined under Section 43(3) of the Act. It was

accordingly held that depreciation was allowable on gas cylinders at 100%. The view taken by the Delhi High Court has been followed in a recent judgement by a Division Bench of the Madras High Court in the case of CIT v. Synergy Financial Exchange Ltd.(2007) 288 ITR 366.

In view of the above, the question raised by the Revenue is answered against it and in favour of the assessee.